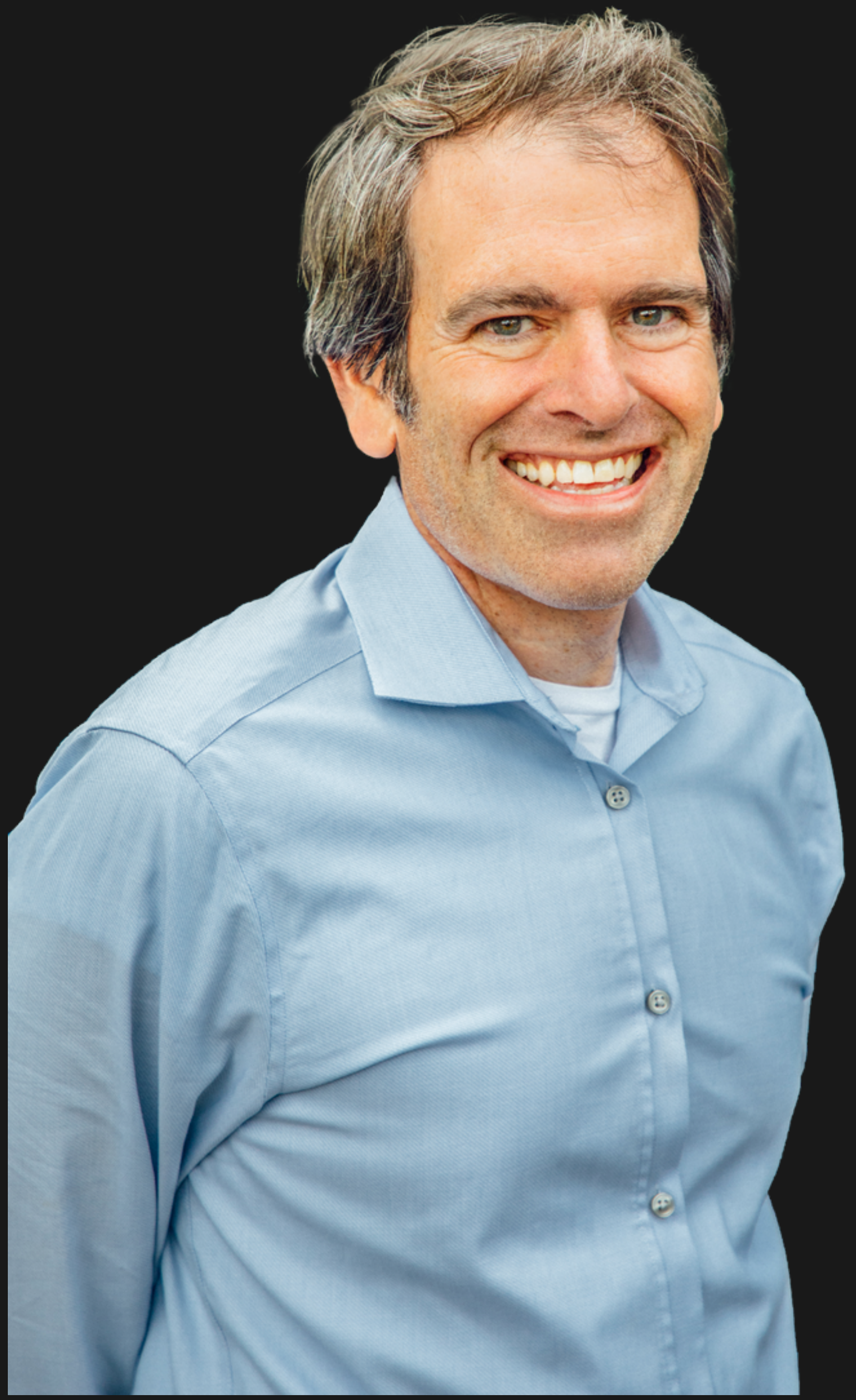
Introduction to litigation finance

Curtis Smolar | Legalist, Inc. | March, 2020



Curtis Smolar

Former commercial litigator for 20 years

- Built personal firm from scratch
- Represented Paypal & Ebay
- Partner, Fox Rothschild (AmLaw 100)
- Partner, De La Pena & Holliday

Current: General Counsel, Legalist

- Litigation finance company
- Mid-size commercial claims and mass torts
- Funding ranges from $100K - $10M

What is litigation finance?

Litigation finance is where
a third party provides
capital to a
plaintiff involved in litigation
in return for some
financial recovery from the lawsuit.

Akin to a law firm taking a case on contingency,
payout to the funder is contingent upon a
successful outcome of the legal claim.

Who uses litigation finance?

Law Firms

Monetize contingency stakes. Take on more clients who cannot necessarily afford your billing rate. Hybrid arrangements for risk-sharing.

Small Businesses

Monetize litigation assets without impacting operating capital.

General Counsel of Fortune 500 Co.

Favorable accounting treatment.

Individuals

Pay for attorney's fees.

Litigation finance as a best practice

"The life-blood of the justice system."

- Lord Neuberger,
president of the United Kingdom's
Supreme Court describes litigation finance

In England, all lawyers are now required to advise
their clients about the availability of litigation finance.

Key elements of litigation finance

NON-RECOURSE

Funding is non-recourse (i.e no repayment if unsuccessful)

SIGNIFICANT RISK

Funder incurs significant risk in exchange for upside if plaintiff prevails.

PERCENTILE

Recovery is based on either a percentage or a multiple of the funding amount (generally targeting contingency-like outcome).

Litigation finance for your clients?

- Billable hour growing less desirable for clients, who are opting for other models - per project, hybrid fees, and other creative billing methods.
- Corporate clients are not investing in the litigation assets.
- Firms are passing on plaintiffs' side work because of the cost and concern about recovery.

Litigation finance is a risk-free way to

take on clients who do not want to or cannot pay unless they win.

Funding structure

CONTINGENCY

Law firm takes cases on full contingency, pays for all costs

Pros: Full 33% contingency upside

Cons: Negatively affects end of year payouts, incurs significant risk for the firm

HYBRID

Law firm charges reduced hourly rate in exchange for small success fee

Pros: Monthly invoices paid bringing in regular revenue; success fee

Cons: Lower hourly rate

FULLY FUNDED

Law firm chooses to get paid on a full hourly basis by litigation finance firm

Pros: No risk; monthly invoices paid promptly without risk to client or law firm

Cons: No upside if successful recovery

Legalist

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